

Notice of Allowability

Application No.

09/754,093

Examiner

Trenton J. Roche

Applicant(s)

HISATAKE, DERRICK I.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to communications filed 30 December 2005.
2. ☒ The allowed claim(s) is/are 1-6, 8-15, 17-22, 24-29 and 31 (renumbered as 1-27).
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

1. This Office Action is responsive to communications filed 30 December 2005.
2. Per Applicant's request, amended claims 1, 9, 18 and 25 have been entered. Claims 1-6, 8-15, 17-22, 24-29 and 31 are currently pending.
3. Claims 1-6, 8-15, 17-22, 24-29 and 31 have been examined.

Response to Arguments

4. Applicant's arguments, see pages 12 and 13 of the Remarks, filed 30 December 2005, with respect to claims 1-6, 8-15, 17-22, 24-29 and 31 have been fully considered and are persuasive. The rejection of claims 1-6, 8-15, 17-22, 24-29 and 31 under 35 U.S.C. § 103(a) has been withdrawn.

Allowable Subject Matter & Examiner's Statement of Reason(s) for Allowance

5. Claims 1-6, 8-15, 17-22, 24-29 and 31 (renumbered as 1-27) are allowed.
6. The following is an Examiner's statement of reasons for allowance:

The closest found prior art of record, specifically, U.S. Patent 6,055,632 to Deegan et al. (hereinafter "Deegan"), taken alone or in combination with U.S. Patent 6,070,012 to Eitner et al. (hereinafter "Eitner") or U.S. Patent 6,467,088 to alSafadi et al. (hereinafter "alSafadi"), fails to teach or reasonably suggest a method for upgrading software of a peripheral device in accordance with independent claim 1. Specifically, none of Deegan, Eitner or alSafadi teach *receiving, at a network device, an upgrade package over a computer network sent from a client device, the upgrade package including a flash erase file containing null data and upgrade software...determining if the update package is compatible with the peripheral device based on the upgrade information; and automatically upgrading internal software of the peripheral device if the upgrade*

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package is compatible with the peripheral device by appending contents of the flash erase file to a packet header, the packet header containing instructions for the peripheral device for overwriting contents of software in the peripheral device with the appended contents, and by transferring the packet header and the upgrade software to the peripheral device by a connection. (claim 1). Similar limitations are recited in independent claims 9, 18 and 25.

Deegan discloses a method of transferring firmware over a network to a programmable controller system. The system provides the ability to determine that an upgrade for the controller system is required, and as a result will supply the required software. Eitner discloses a communications system wherein a Call Processor Shelf will initiate a download process to a peripheral controller via a network, thereby enabling the peripheral controller to perform a software update. However, neither Deegan nor Eitner disclose initially receiving, at a network device, an upgrade package, the upgrade package including a flash erase file containing null data and upgrade software, and automatically upgrading internal software of the peripheral device if the upgrade package is compatible with the peripheral device by appending contents of the flash erase file to a packet header, the packet header containing instructions for the peripheral device for overwriting contents of software in the peripheral device with the appended contents. At best, Deegan and Eitner disclose sending software via a network, thereby eluding to the possibility of upgrade software being sent *in* packets, and do not disclose appending contents of the flash erase file to a packet header as required by independent claims 1, 9, 18 and 25. Furthermore, alSafadi does not provide any additional fulfillment of this deficiency.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trenton J. Roche whose telephone number is (571) 272-3733. The examiner can normally be reached on Monday - Friday, 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Trenton J Roche
Examiner
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TJR


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